

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1483 of 1997

in

SPECIAL CIVIL APPLICATION No 8078 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VANTHLI MUNICPAL BOROUGH

Versus

HIMATLAL D RATHOD

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Appearance:

MS SEJAL K MANDAVIA for Appellants  
MRS DT SHAH for Respondent No. 1  
GOVERNMENT PLEADER for Respondent No. 5, 6, 7

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 02/02/98

ORAL JUDGEMENT (PER C.K.THAKKER J.)

Admitted. Mrs. D.T.Shah waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

This appeal is filed against interlocutory order passed by the learned Single Judge on October 31, 1997 in Spl.C.A.No.8078 of 1997. That petition was filed by six petitioners for an appropriate writ, direction or order directing the appellant Municipal Borough to pay salary to the petitioners in accordance with law. It was the case of the petitioners that though they had worked, salary was not paid to them.

The learned Single Judge issued notice. On returnable date, an affidavit was filed that the service was effected upon the Municipal Borough but nobody appeared. The learned Single Judge was of the opinion that no cause was shown for non-appearance and also for non-payment of salary. The learned Single Judge, therefore, directed the Municipality to pay salary to the petitioners for the period between June 1997 to October 31, 1997 at the rate as paid for the month of May, 1997.

Ms. Mandavia, learned counsel for the appellant stated at the Bar that she had already tendered an affidavit-in-reply and it was produced in the court. The said affidavit is missing. She is, therefore, permitted to produce a copy thereof which is taken on record.

Ms. Mandavia submitted that the appellant is in financial constraints and it was unable to pay salary to the employees. It was also stated that the authority has taken a loan of Rs.23 lacs from the Government and now regular salary is being paid to them. For a period of six months the body could not pay salary to its employees. It is also stated that not only six petitioners who approached this court, but in all about 45 employees could not be paid salary. A list is also annexed to the affidavit.

Looking to counter-affidavit filed on behalf of the petitioners, however, it is clear that about 16 employees, whose names have been mentioned, were paid salary upto November 1997. That affidavit is filed on December 9, 1997. The fact about payment of salary is not denied even by the Municipality, but it was stated that previous body had made payment.

In our opinion, when some of the employees were paid their salary, it was not open to the

appellant-Municipality to deprive other similarly situated persons from paying salary. Again, when the employees have worked, it is bounden duty of the Municipality to pay salary.

We are told that the main matter is fixed for final hearing and it is on the Board of the learned Single Judge. In the facts and circumstances of the case, it is in the interest of justice to direct the appellant Municipality to pay to its employees regular salary every month. Over and above payment of regular salary for the month, the appellant municipality will also pay salary of one month for past dues to clear arrears of six months.

With this modification, in our opinion, appeal deserves to be disposed of and accordingly disposed of. We are not expressing any opinion on merits of the matter when the matter is pending before the learned Single Judge and the observations are only for deciding this appeal against interim order passed by the learned Single Judge. Appeal is accordingly disposed of. No order as to costs.

Dt.2.2.1998. (C.K.THAKKER J)

(A.L.DAVE J.)

GHB/2.2